109-139

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~281~~ 47

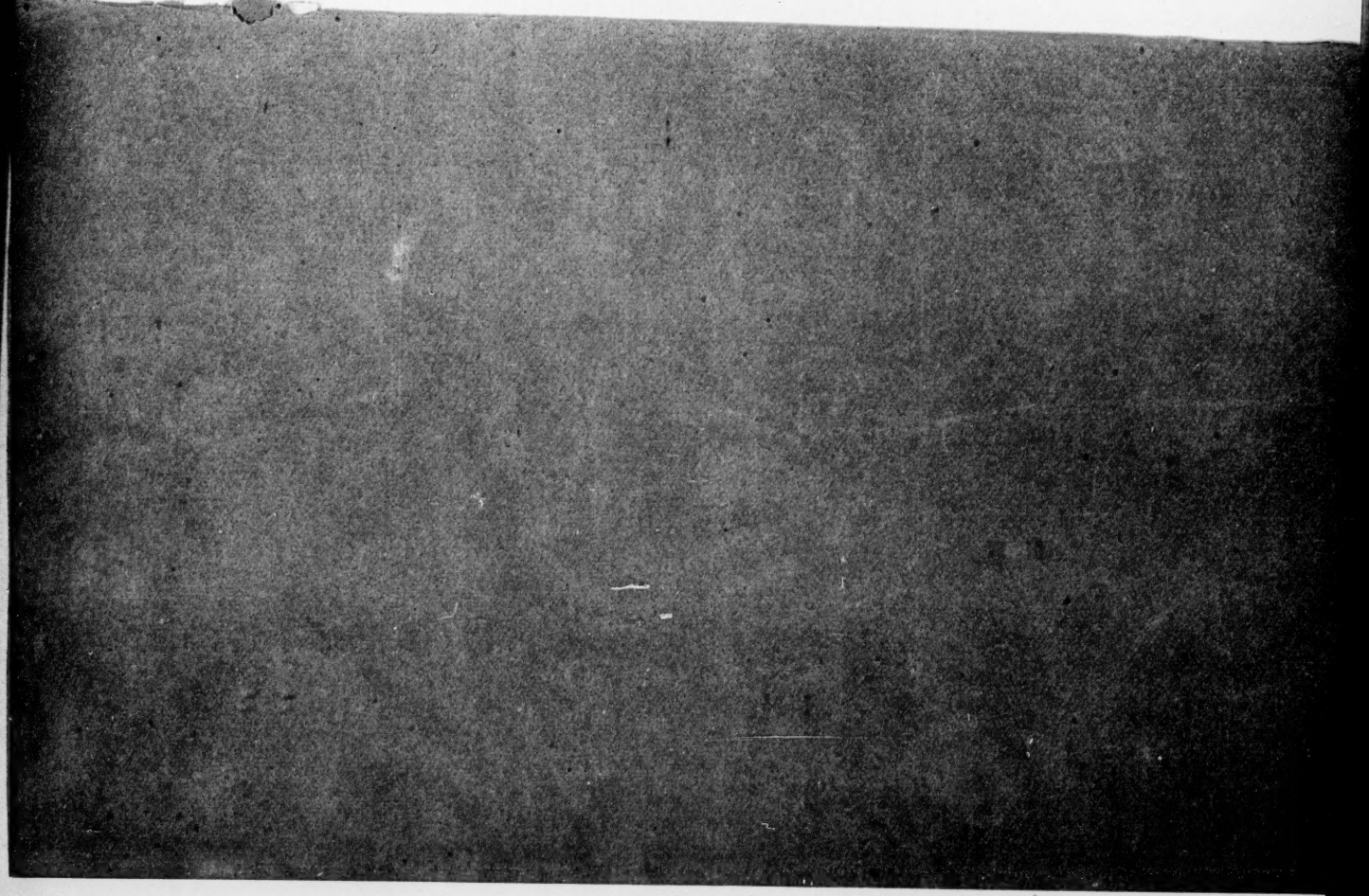
CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

HENRY PASTOR, JOHN G. WALKINSHAW, AND CARL VOIGHT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 25, 1880.



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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Henry Pastor, John G. Walkinshaw, and Carl Voight, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, as by his complaint appear': We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the eighteenth day of June, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

The foregoing writ is hereby allowed.
June 18, 1880.

SAM'L BLATCHFORD, *C. J.*

2 (Indorsed:) A 294. U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Henry Pastor, John G. Walkinshaw, & Carl Voight, defendants in error. 4862. Writ of error. Stewart L. Woodford, att'y for pl'ff in error. To Messrs. Hartley & Coleman, attorneys for def'ts in error.

Due service of a copy of the within writ of error is hereby admitted.
New York, June 18, 1880.

HARTLEY & COLEMAN,
Att'ys for Def'ts in Error.

(Stamped:) U. S. circuit court. Filed June 18, 1880. John I. Davenport, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to 31, inclusive, contains a true and complete transcript of the record and proceedings

3 had in said court in the case of Chester A. Arthur, plaintiff in error, against Henry Pastor, John G. Walkinshaw, and Carl Voight, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twentieth day of July, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the said United States the one hundred and fifth.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

4 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of October, 1877, to wit, of the 21st day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

Witness the honorable Samuel Blatchford, one of the judges of the said circuit court.

JOHN I. DAVENPORT, *Clerk.*

5 The President of the United States of America, to the judges of the supreme court of the State of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Chester A. Arthur, defendant, by Henry Pastor & al., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 26th day of December, 1876, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 9th day of December, in the year one thousand eight hundred and seventy-six.

[L. S.] JOHN I. DAVENPORT, *Clerk.*

STEWART L. WOODFORD, *Defendant's Attorney.*

6 Circuit court of the United States for the southern district of New York.

HENRY PASTOR, JOHN C. WALKINSHAW, & Carl Voight, plaintiffs, *against* CHESTER A. ARTHUR, DEFENDANT. } Complaint.

Plaintiffs complain:

1st. That defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2nd. That plaintiffs were, during said times, partners in trade under the firm name of Pastor, Walkinshaw & Company, and as such duly imported and entered at the port of New York the goods described in the bill of particulars annexed. That defendant, as such collector, ex-

7 acted from plaintiff, as and for duties thereon, viz, twenty cents per pound and twenty-two per cent. ad valorem.

3d. That by the laws of the United States the true duty upon said goods was at the rate of twenty cents per pound and eleven per cent.

, and plaintiffs, in order to obtain said goods, were compelled to pay the defendant, as such collector, the sum of one hundred and twenty-five dollars in excess of the said rate and of the amount required by law.

4th. That plaintiffs filed with said defendant due and timely protests, in writing, upon each entry of said goods against his decision exacting such duty, setting forth, distinctly and specifically, the grounds of objection thereto, and also as above stated.

5th. That plaintiffs made due and timely appeals on each entry to the Secretary of the Treasury, who affirmed the decision of the defend-

8 ant upon certain of said entries, and as to the rest neglected for more than ninety days, as well from the dates of said appeals as prior to the commencement of this action, to decide said appeals.

6th. That the bill of particulars, hereto annexed, states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury and of his decision thereon, if rendered, together with the other particulars required by law, and is made a part hereof.

7th. That said sum so exacted as aforesaid has never been repaid to plaintiffs, and is still due and owing to them.

Wherefore plaintiffs demand judgment against *against* defendant for one hundred and ninety-five dollars in United States gold coin, with

9 interest on the several sums named in the bill of particulars from January 3, 1876, together with the costs and disbursements of this action.

HARTLEY & COLEMAN,
Attorneys for Plaintiffs.

Bill of particulars.

Name of importers: Pastor, Walkinshaw & Co.
Description of goods: Washed wool.
Name of vessel: Salier.
Whence imported: Bremen.
Date of invoice: Dec. 3, 1875.
Date of entry: Jan'y 3d, 1876.
Date of payment of duty in excess: " " "
Amount exacted in excess: $195.00.
Protest filed: Jan'y 20, 1876.
Date of appeal to Secretary of the Treasury: Jan'y 20, 1876.
Date of decision by " " " " May 9th, "

10 United States circuit court, southern district of New York.

HENRY PASTOR, JOHN C. WALKINSHAW, & CARL VOIGHT
versus
CHESTER A. ARTHUR, COLLECTOR, ETC.

The defendant herein, answering the complaint of the plaintiffs herein, says:

I. He admits he was, at the times in said complaint mentioned, collector of the port of New York, and, in such official capacity, received payment from the plaintiffs for and on account of duties due to the United States, under the laws thereof, upon certain importations of merchandise imported by said plaintiff into the port of New York from foreign countries.

II. He alleges that any and all moneys received by him from plaintiffs at the times in said complaint mentioned were paid by said plaintiffs as a debt due by them to the United States, and not otherwise; and were received by defendant by virtue of his office as said collector, and under the direction of the Secretary of the Treasury, and for and on account of the United States, and were forthwith thereafter and before the commencement of this action, or the service of any protest, paid into the Treasury of the United States; and that the amount of said moneys, so received from plaintiffs, were the amounts due from them to the United States, according to the rate of duty imposed by law upon the several articles of merchandise by them imported and assessed with duty, and no other sums than duties regularly assessed, and ascertained and liquidated according to law upon the plaintiffs' import entry thereof, were collected or received by defendant from the plaintiff'.

III. And defendant, further answering, denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint, by the marks and numbers and description there given, except in so far as to state, and defendant herein answering doth aver and state, that said merchandise were dutiable according to the laws of the United States, at the rates at which the same were assessed.

IV. And defendant, further answering, admits that plaintiff" filed certain protests, but he denies that he has sufficient information to form a belief as to whether, upon the importations in question, protests and appeals were made by the plaintiffs, conformable to the laws of the United States, and defendant leaves plaintiff" to make such proof thereof as they may be advised.

V. And as to any other allegations in said complaint contained, not hereinbefore fully answered or admitted, defendant denies the same, and each thereof, and leaves the plaintiffs to make such proof thereof as they may be advised.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

11 Therefore the issue above joined is ordered by the said court to be tried at the circuit court appointed to be held at the United States court buildings, in the city of New York, on the third Monday of October, in the year 1879.

And now at this day, to wit, on the 14 day of January, A. D. 1880, before the Hon. Nathaniel Shipman, judge of the said circuit court, at the U. S. court buildings, in the city of New York, come the said parties, by their attorneys, and the jurors of the jury also come, who, being duly chosen, tried, and sworn in said cause, upon their oaths say that defendant

is indebted to said plaintiffs as they have above complained, and they assess the damages of said plaintiffs at two hundred and twenty-nine dollars and eight cents lawful money of the United States, and for these costs and charges the sum of fifty-three and $\frac{61}{100}$ dollars, and defendant
12 was granted a certificate by the court that he had acted in the matter under the order of the Secretary of the Treasury of the United States.

Therefore it is considered by the said court now here that the said plaintiffs do recover against the said defendant two hundred and twenty-nine $\frac{8}{100}$ dollars, and fifty-three and $\frac{61}{100}$ dollars for costs and charges by them, about, in this behalf laid out and expended, by the said court here adjudged to them, and with their assent, according to the form of the statute in such cases made and provided, amounting in the aggregate to the sum of two hundred eighty-two and $\frac{69}{100}$ dollars.

229. 08
53. 61
$282. 69

Judgment signed this 2d day of June, 1880.

J. M. DEUEL,
Dep'y Clerk.

(Endorsed:) U. S. circuit court. H. Pastor & al. vs. C. A. Arthur. Judgment record. Hartley & Coleman, attorney' for pl'ffs, 51
13 William st., New York City. U. S. circuit court. Filed June 2d, 1880. John I. Davenport, clerk.

14 United States circuit court, southern district of New York.

HENRY PASTOR ET AL.
ag'st } 4863.
CHESTER A. ARTHUR.

Defendant's bill of exceptions.

Afterwards, to wit, on the 14th day of January, 1880, at a stated term of the United States circuit court, begun and holden at the city of New York, to wit, on the third Monday of October, 1879, before the Hon. Nathaniel Shipman, district judge of the United States for the district of Connecticut, appointed to hold the said circuit court according to the form of the statute in such case made and provided, the aforesaid issues, so joined as between the said parties, as by the record more fully ap-
15 pears, came on to be tried by a jury duly empanelled and sworn for that purpose, the said plaintiffs being represented by Edward Hartley, esq., and Walter H. Coleman, esq., and the defendant by Albert B. Herrick, esq., ass't U. S. attorney for the southern district of New York.

And in the course of the trial the said counsel for the defendant did take and allege sundry exceptions to the ruling of the court, which exceptions are hereinafter severally set forth.

To sustain the issues on the part of the plaintiffs the latter proved the importation by them, per the steamer Salier, from a foreign country into the port of New York, on the 3d day of January, 1876, of a certain quantity of merchandise, to wit, washed wool of the first class, the value of which when unwashed at the last place or port from which the same was exported to the United States, excluding charges, was less than
16 thirty-two cents per pound; that upon such washed wool the defendant had exacted, under Schedule L, Title 33 of the Revised

Statutes, passed June 22d, 1874, a specific duty of twenty cents on each pound thereof, and in addition an ad valorem duty of twenty-two per centum on the invoice value thereof.

The plaintiffs' counsel then read and put in evidence a paper purporting to be a protest or notice to the defendant, as collector, of their dissatisfaction with his decision as to the proper rate of duty on the aforesaid importation, a copy of which is as follows:

"To Hon. C. A. ARTHUR,
"*Collector of Customs, New York:*

"SIR: We hereby protest against the payment of twenty-two per centum ad v. and twenty cents per lb., charged on washed wool of the first
17 class contained in entry for consumption p. st'r Salier, Jan'y 3d, '76 (diff. abt. $175.00, and goods marked G. W., 140–151, 12 bales wool), claiming that under existing laws, under Schedule L, Title 33, Rev. Stats., said goods are liable to a duty of eleven per centum ad v. and twenty cents per pound, because the value of washed wool of the first class is about twice the amount of same in an unwashed condition.

"We pay the amount exacted in order to get possession of the goods, and claim to have the difference refunded.

"PASTOR, WALKINSHAW & CO.

"NEW YORK, *Jan'y 17th*, 1876."

It was not contended that the assessment of twenty cents per pound was erroneous. The plaintiffs' counsel then proved that unwashed wool is uniform about half dirt; that after the dirt is removed by the process of washing the wool is then and was at the time of the passage
18 of the act under consideration generally known among large dealers therein and importers thereof as washed wool; that some impurities remain after the washing; that such impurities may be removed by a further process of scouring; that when such impurities are so removed the wool is then and was at the time above mentioned generally known among large dealers therein and importers thereof as scoured wool; that one pound of washed wool is now and was at such time, and is now and was at such time among large dealers therein and importers thereof, generally regarded as equivalent in value to two pounds of unwashed wool; that the cost of one pound of washed wool is and was at such times the cost of two pounds of unwashed wool; that one pound of scoured
19 wool is now and was at all of such times generally regarded among large dealers therein and importers thereof as equivalent in value to three pounds of unwashed wool; that the cost of one pound of scoured wool is now and was at all such times the cost of three pounds of unwashed wool. As to the particular wool in controversy, evidence was given by the customs appraiser who examined and appraised the goods that the quantity imported was 3,294 pounds of washed wool of class 1, tariff schedule L, the dutiable appraised value of which in its washed condition was $1,627.00, or 49.49 cents per pound; and had the same been imported in an unwashed condition the dutiable appraised value thereof would have been $813.50, or 24.69 c. per pound. In this latter condition the following duty would have been assessed, viz, a specific rate of 10
20 cents per pound and an ad valorem rate of 11 % upon the value of

each pound in addition, which ad valorem rate upon the value of 24.49 c. per pound would have amounted to 02.7159 cents per pound, giving as the total amount of duty per pound 12.7159 cents, and the duty upon 3,294 pounds would have amounted to $418.86. As this would have been the total amount of duty on this wool in its unwashed condition, twice that amount upon this wool which was washed would be $837.72.

This method of calculation is the practical equivalent, disregarding fractions, of 3,294 lbs. @ 20c. per lb., $658.80, and $1,627.00, at 11 %, $178.97, aggregating $837.77.

The defendant had, however, in making his assessment, imposed double the rate of duty in each case, instead of double the amount of duty
21 resulting from the application of the rates to the ascertained facts, and had assessed 3,294 lbs. at 20c. per lb., $658.80, and $1,627.00 at 22 %, $357.94, aggregating $1,016.74.

The difference between his assessment and that claimed to be due by the plaintiffs was $178.97.

The plaintiffs admitted the correctness of defendant's assessment of the specific duty of 20 cents per pound, but denied the correctness of his ad valorem assessment, because he had assigned to unwashed wool the value of washed wool, and had taken a double ad valorem rate on (the value of washed wool, which is) twice the value of unwashed wool.

The foregoing were the uncontradicted facts, and the defendant offered no testimony. The evidence being closed, defendant's counsel
22 moved the court to direct a verdict for the defendant upon the following grounds:

1st. That it appears in evidence that the amount of duties that have been collected upon the plaintiff's washed wool has been ascertained by first multiplying the number of pounds by ten cents, and the invoiced value of such washed wool by 11 per cent., by then adding together the two amounts so obtained, and by finally multiplying the sum of these two amounts by 2.

2d. That for the purpose of ascertaining the duties to which such washed wool was subject, Schedule L, Title 33 of the act of June 22d, 1874, required that the number of pounds stated in the invoice should be multiplied by 10 cents, and that the rate of the ad valorem duty therein prescribed, to wit, 11 per centum, shall be multiplied by the invoice
23 value of the wool (that this operation has been performed in this case) and that the result thus obtained should be multiplied by two for the purpose of ascertaining the amount of duties payable upon washed wool of the kind and value in question. And the facts proved showed that this was the course pursued by the defendant as collector.

This motion was denied by the court, and to this ruling of the court the defendant's counsel duly excepted, which exception was duly noted and allowed by the court.

The plaintiffs' counsel then moved the court to direct a verdict in favor of the plaintiffs.

The court thereupon, there being no disputed question of fact, directed a verdict in favor of plaintiffs.

To this ruling of the court the defendant's counsel duly excepted,
24 which exception was duly noted and allowed by the court.

And inasmuch as the foregoing several matters of fact and of law, and the said several exceptions taken and made to the instructions and decisions of the court in the course of the said trial do not appear upon the records of the trial, therefore, on the prayer of the said defendant by his counsel, the said judge has signed the foregoing as and for the bill of exceptions in this cause as of the 14th day of January, 1880, the day said verdict was rendered and at the October term, 1879, of said court.

N. SHIPMAN, [L. S.]
Judge.

We hereby consent that the foregoing bill of exceptions be filed nunc pro tunc as of the 14th day of January 1880.

Dated New York, June 12th, 1880.

HARTLEY & COLEMAN,
Pl'ffs' Att'ys.

25 STEWART L. WOODFORD,
U. S. Att'y, for Def't.

Ordered accordingly.

N. SHIPMAN, *Judge.*

(Endorsed:) 4862. U. S. circuit court, southern district of New York. Henry Pastor & al. versus C. A. Arthur. Defendant's bill of exceptions. Stewart L. Woodford, United States attorney, att'y for def't. To Messrs. Hartley & Coleman, Att'ys for Pl'ffs.

Please to take notice that the within is a copy of the defendant's bill of exceptions as settled by Hon. Judge Shipman on May 10th ult., and also that the engrossed original bill of exceptions will be presented for signature and seal to Hon. Judge Shipman at his chambers at Hartford, Conn., on the 4th of June inst.

26 New York, June 1st, 1880.

Yours, &c.,

STEWART L. WOODFORD,
U. S. Attorney, Att'y for Def't.

To Messrs. HARTLEY & COLEMAN, *Attorneys for Pl'ffs.*

Service of a copy of the within is hereby admitted.

HARTLEY & COLEMAN,
Pl'ffs' Attorneys.

Filed this 16th day of June, 1880, nunc pro tunc, as of Jan'y 14, 1880, as per order of court.

JOHN I. DAVENPORT, *Clerk.*

27 Supreme Court of the United States.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,
vs.
HENRY PASTOR, JOHN G. WALKINSHAW, & Carl Voight, defendants in error. } 4862.

Afterwards, to wit, on the second Monday of October in the same term, before the justices of the said court, at the Capitol in Washington, comes the said plaintiff in error, by Stewart L. Woodford, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this,

to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendants in error against the said plaintiff in error, whereas by the law of the land the said
28 judgment ought to have been given for the said plaintiff against the said defendants. And the said plaintiff prays that the judgment aforesaid, for the errors aforesaid, may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c., &c., &c.

STEWART L. WOODFORD,
Attorney for Plaintiff in Error.

(Endorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, vs. Henry Pastor, John G. Walkinshaw, & Carl Voight, defendants in error. Assignment of error. Stewart L. Woodford, United States attorney, att'y for pl'ff in error. To Messrs. Hartley & Coleman, att'ys for def'ts in error.

Due service of a copy of the within is hereby admitted.
29 New York, June 21, 1880.

HARTLEY & COLEMAN,
Att'ys for Def'ts in Error.

U. S. circuit court. Filed June 22, 1880. John I. Davenport, clerk.

30 UNITED STATES OF AMERICA, *ss:*

To Henry Pastor, John G. Walkinshaw, and Carl Voight, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and eighty, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated June 18th, 1880.

SAM'L BLATCHFORD, *C. J.*

31 (Indorsed:) A 294. U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Henry Pastor, John G. Walkinshaw, & Carl Voight, defendants in error. 4862. Citation. Stewart L. Woodford, attorney for pl'ff in error, to Messrs. Hartley & Coleman, att'ys for def'ts in error.

Due service of a copy of the within citation is hereby admitted.
New York, June 18, 1880.

HARTLEY & COLEMAN,
Att'ys for Def'ts in Error.

(Stamped:) U. S. circuit court. Filed June 18, 1880. John I. Davenport, clerk.

(Indorsement on cover:) No. 281. Chester A. Arthur, collector of the port of New York, plaintiff in error, vs. Henry Pastor, John G. Walkinshaw, and Carl Voight. S. New York C. C. U. S. Filed 25 September, 1880.

109-139

OFFICE SUPREME COURT U. S.
FILED
OCT 4 1883
JAMES H. McKENNEY, Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

CHESTER A. ARTHUR, COLLECTOR, &c., plaintiff in error,
vs.
HENRY PASTOR AND OTHERS.
No. 47.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

CHESTER A. ARTHUR, COLLECTOR, &c., plaintiff in error.
vs.
HENRY PASTOR AND OTHERS.
No. 47.

BRIEF FOR THE UNITED STATES.

This case comes up on a writ of error to the United States circuit court for the southern district of New York.

The plaintiff in error was sued by the defendants in error in the supreme court of the State of New York, for duties alleged to have been illegally exacted from them by him as the collector of the port of New York.

The case was removed to the circuit court of the United States in the usual way.

Omitting any special reference to the complaint and answer, we proceed at once to consider the case as presented in the bill of exceptions (R. pp. 5–8).

On the 3d January, 1876, the defendants imported a quantity of washed wool of the first-class, the value whereof unwashed at the last place or port from which the same

was exported to the United States, excluding charges, was less than 32 cents per pound. On this importation the plaintiff in error had required payment of a specific duty of 20 cents per pound, and an ad valorem duty of 22 per cent. on the invoice-value thereof against the protest of the defendants in error, to the effect that, while the duty of 20 cents per pound was authorized, the law did not impose a greater ad valorem duty than 11 per cent., which, when calculated on the value of the importation, amounted to 22 per cent. on what would have been its value if unwashed wool.

The importation in question came under class 1, Schedule L, Title 33 of the Revised Statutes.

The law prescribes that—

> Wools of the first class, the value whereof at the last port or place whence exported to the United States, excluding charges in such port, shall be thirty-two cents or less per pound, ten cents per pound, and, in addition thereto, eleven per centum ad valorem.

This provision refers to wools in the unwashed state.

But the wools in question were *washed* wools of class 1, the provision imposing a duty on which is in these words: "The duty upon wool of the first class which shall be imported *washed shall be twice the amount of the duty to which it would be subjected if imported unwashed.*"

The number of pounds contained in the importation was 3,294, on which was assessed a specific duty of 20 cents per pound—$658.80, and an ad valorem duty of 22 per cent. on $1,627, the invoice value, $357.94, making a total of $1,016.74.

The plaintiff introduced evidence tending to show that unwashed wool is about half dirt, that after the dirt is

removed by washing the wool was then and at the time of the passage of the tariff act in question generally known "among large dealers and importers" as "washed wool;" that some impurities remain after washing which can only be removed by scouring, the wool in that state, being generally known among large dealers and importers as "scoured wool;" that one pound of washed wool was, at the times above mentioned, generally regarded "*among large* dealers and importers" as *equivalent in value to two pounds of unwashed wool;* that the cost of one pound of washed wool was the cost of two pounds of unwashed; that the cost of one pound of *scoured* wool was generally regarded among said dealers and importers as equal to that of *three* pounds of *unwashed.*

The evidence showed that the collector had applied the law to the importation in question as follows: He assessed a specific duty of 20 cents on the number of pounds imported, *about which there is no dispute,* and an ad valorem duty of 22 per cent. *on the invoice value of* $1,627, in the place of a duty of 11 per cent. on the invoice value, or 22 per cent. on *one-half* that value, as representing the value of *unwashed* wool, which the defendant in error contended was the true principle.

The following figures represent the application of these two variant principles to the facts of this case:

I.

3,294 pounds wool at 20 cents per pound	$658 80
$1,627 value of wool at 22 per cent	357 94
Amount of duty paid	1,016 74

II.

3,294 pounds wool at 20 cents per pound	658 80
$1,627 value of wool at 11 per cent	178 97
Amount claimed by importers to be due	837 77

Consequently this action was to recover $178.97, the difference between what was exacted and paid and what the importers contended was due.

The court, being asked by the plaintiff in error to instruct the jury to find for him, on the ground that he had followed the correct principle in applying the law as above, refused to do so. Whereupon he excepted. (R. p. 7.)

There being no evidence on the part of the plaintiff in error, and no dispute as to the facts, the court instructed the jury to find for the defendant in error, to which ruling the plaintiff in error excepted.

It is to be remarked that the learned judge, in ruling as he did, followed a similar ruling of his own in DeForrest v. Arthur, a case tried several years before.

There was a verdict for the defendant in error and judgment accordingly. (R. pp. 4, 5.)

ASSIGNMENT OF ERRORS.

The court should have instructed the jury to find for the plaintiff in error, on the ground that the duties assessed by him were authorized by law.

ARGUMENT.

If the argument in support of the judgment is to prevail it must be on the ground of the controlling, not to say *despotic*, effect of the word "*amount*" in the sentence, that—

The duty upon wool of the first-class, which shall be imported *washed*, shall be *twice the amount* of the duty to which it would be subjected if *imported unwashed*.

The simple question is whether the primary and, it may be, more usual meaning of the word "*amount*," is to dominate the sentence, or is to give way to the intention deducible from *the whole sentence*.

There is a formidable objection to allowing the word "amount" its primary sense, as contended for by the defendants in error, and so, holding that the duty laid on importations of washed wool of the first class is only *twice the sum* that is exacted on such wool unwashed. The difficulty lies in the necessity, produced by this reading, of making unwashed wool a *standard*, and consequently of imputing to Congress, by implication, the solecism of setting up as a standard or metewand a thing essentially mutable and inconstant, for it stands to reason that there can be no uniformity in the weight or value of wool unwashed, because some wool has more foreign matter adhering to it than others, and some wool is washed cleaner than others.

It does not escape our attention that there was evidence on the trial that one pound of washed wool was "*generally regarded*" by "*large dealers and importers*" as equivalent in value to *two pounds* of unwashed wool, but surely testimony like this is very far from showing that there is any such uniformity in weight and value in unwashed wool as to make it reasonable *to infer* that Congress intended to set it up as a standard. It is a great stride to contend that because large dealers in wool transact on certain rough estimates of the relative values of wools unwashed, washed, and scoured, therefore it may be assumed

that Congress intended that the duties on these wools should be assessed on the basis of these estimates. Besides, is it reasonable to presume that Congress would have left to implication a matter so important to the revenue?

It would seem to follow, then, from these two considerations, viz: the necessary fluctuation in the weight and value of unwashed wool, and the omission of Congress to set up a standard of any kind, expressly, that the only reasonable construction that can be given the law is that washed wool of the first class must bear double the *rate* of duty it would have borne had it remained unwashed.

It is submitted that it is much more reasonable to suppose that Congress used the word "amount," in the above collocation, as interchangeable with rate, than in its primary sense, necessitating, as the latter view does, the resort to an implication which looks very much like judicial legislation.

Courts are decidedly averse from extending statutes by implication. There is small reason indeed for resorting to implication in the case at bar, seeing that the word amount is not infrequently used as equipollent to rate. For example, 'tis in accordance with usage to ask what amount of duty an article pays, having no regard to any particular quantity or value, and *usus est jus et norma loquendi.*

It is respectfully submitted that the judgment should be reversed.

WM. A. MAURY,
Assistant Attorney General.

109-159

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SUPREME COURT U. S.
FILED
OCT 10 1883
JAMES H. McKENNEY, Clerk.

U. S. Supreme Court.

CHESTER A. ARTHUR,
Plaintiff in Error,
vs.
HENRY PASTOR et al.,
Defendants in Error.

October Term, 1883.
No. 47.

Brief for Defendants in Error.

STATEMENT.

Pastor imported in 1876, 3,294 pounds of washed wool of the first class, of the following dutiable *appraised* values, viz.: as washed, $1,627, or 49.39c. per pound; and as unwashed, $813.50, or 24.69c. per pound.

Testimony of the appraiser, who examined and appraised this particular wool.

(Record, folios 19, 20.)

It was thus proved, and specifically also (Record, folio 16), that its value, unwashed, at the last foreign place whence exported to the United States, was, excluding charges, less than 32 cents per pound.

The collector exacted the duty as follows:

On 3,294 pounds, @ 20 cents per pound	$658 80
" $1,627 (its value, *washed*), @ 22 per cent.....	357 94
	$1,016 74

Pastor's calculation under his protest was:

On 3,294 pounds, @ 20 cents per pound ...	$658 80
" $1,627, washed value, @ 11 per cent, or $813.50, unwashed value, @ 22 per cent....	178 97
	$837 77

Claiming to recover the difference for which he got judgment, viz., $178.97.

The Statute is:

SCHEDULE L, TIT. 33.

"Wools of the first class, the value whereof at "the last port or place whence exported to the "United States, excluding charges in such port, "shall be 32 cents or less per pound, 10 cents per "pound, and, in addition thereto, 11 per cent. *ad* "*valorem.*"

Exceeding 32 cents per pound, 12 cents per pound, and, in addition thereto, 10 per cent. *ad valorem.*

With these provisions as to washed and scoured wools, viz.: "The duty upon wool of the first class which shall be imported, washed, shall be twice the amount of duty to which it would be subjected if imported unwashed.

"And the duty upon wool of all classes which shall be imported, scoured, shall be three times the duty to which it would be subject if imported unwashed.

Testimony was given that unwashed wool is uniformly half dirt, which is removed by washing, and that a pound of washed wool is the equivalent in value of two pounds of unwashed wool, and that a pound of scoured wool is the equivalent in value of three pounds of unwashed wool, and that these facts are recognized by the general wool trade. This was to show the reason of the Statute, viz.: to obtain the same *amount* of duty on the same amount and value of wool fibre, whether unwashed, washed or scoured, and why, the pound of unwashed wool being the unit, the amount of duty on that was doubled or trebled for the higher grades.

The Appraiser who examined the wool, after testifying to its dutiable appraised value, washed and unwashed, made certain calculations by reducing the *ad valorem* to a per pound rate, to show that the importer was correct in his claim.

Record, pages 6 and 7.

Whatever method of calculation be chosen, it appears throughout that the Collector's error was in ascribing to *unwashed* wool an excessive value. He treated a pound of wool as of the same value, washed or unwashed, although unwashed wool being half dirt was only half price.

Record, folio 18.

His only contention at the trial, and only exception (Record, folios 22-23), was that he had multiplied the number of pounds by ten cents, and the *invoiced value of such washed wool by* 11 *per cent.*, and multiplied the product by two.

This produced more than twice the amount of duty on the wool as unwashed, imposed by the Statute, because the unwashed value of the wool was less than 32 cents per lb., whereas he took the double duty of 22 per cent. on a value of 49.39 cents per lb.

POINTS.

I.

It was the intention of the Statute that the same quantity of pure wool fibre, according to value, should pay the same amount of duty, whether imported unwashed, washed or scoured, and that no evasion of this should be possible by importing wool in different conditions.

Schedule L, Title 33, Revised Statutes.

The *amount* of duty payable on one pound of unwashed wool is the standard and the rates for washed and scoured wool are multiples of that amount, according to the loss in weight by washing or scouring.

Thus, six pounds of unwashed, three pounds of washed, and two pounds of scoured wool, all pay the same amount of duty because they contain the same equivalents of pure wool fibre.

The ratios of pure wool fibre, in quantity and value, by the testimony, are unwashed wool as 1, washed wool as 2, scoured wool as 3, like quantities of each being compared pound for pound.

Record, page 6.

Correspondingly, by the Statute, the amount of duty on washed wool is the unit, or one, on washed wool twice that, or two, and on scoured wool three times as much, or three, pound for pound.

The following calculation shows the different changes in the same wool produced by washing and scouring.

Take 6 lbs. unwashed wool of the quality here imported. The prices and duty per lb. are found at folios 19 and 20 of the Record.

6 lbs. unwashed wool at 24.69c. per lb. cost $1.48.14
And at a duty of 12.7c. per lb. the duty for 6 lbs. is ..... 76.2c.

The unseparated components are:

	Cost.	Duty.
3 lbs. unseparated wool dirt, costing as mixed	74.07c.	38.1c.
1 lb. unseparated wool grease, costing as mixed	24.69c.	12.7c.
2 lbs. unseparated wool fiber, costing as mixed	49.38c.	25.4c.
6 lbs.	74.07c.	38.1c.
	$1.48.14	76.2c.

Washing the above gives the following results:

	Cost.	Duty.
1 lb. unseparated wool grease, costing as still mixed, although washed,	49.38c.	25.4c.
2 lbs. unseparated wool fiber, costing as still mixed, although washed,	98.76c.	50.8c.
3 lbs.	$1.48.14	76.2c.

Scouring the above gives the foliowing result:

		Duty.
2 lbs. purified wool fiber, costing as purified	$1.48.14	76.2c.

These calculations show the following values and duties:

	Value.	Duty.	Ratio.
Unwashed, per lb.....	24.69c.	12.7c.	1
Washed, per lb.....	47.38c.	25.4c.	2
Scoured, per lb.....	74.07c.	38.1c.	3

which exactly accord with the testimony of the wool trade (Record folios 18 and 19), and with the statute, all depending upon the amount of pure wool fiber (the only element of value) contained in a pound.

II.

The argument of the Attorney-General is briefly that the words of the Statute, "twice the *amount* of the duty," should be read twice the *rates* of duty.

It is only necessary to reply that this would change the whole design of the Statute as indicated by the testimony and destroy the reason on which it proceeds.

The difficulty of making washed wool a standard, of which he complains, whether reasonably or not, is found in the law itself, as he admits, on page 2 of his brief, where, after quoting the law imposing the primary duty on wool, he says, "this provision refers to wools in the unwashed state."

That the word "*amount*," instead of *rate*, was designedly used, appears from the Act of which Schedule L is the revision.

Act of March 2, 1867, 14 Stats., p. 560, middle to bottom, where the words, "*twice the amount of duty*," are used in connection with washed wool, and the words, "three times the amount of the duty," in connection with scoured wool.

The phraseology of the original act is too plain to admit of cavil and leaves no room for interpretation.

In no sense do "rate" and "amount" concur in meaning.

Rate is in tariff computations a factor only, to be multiplied by units of quantity, &c., and the amount is the product showing how much duty the importer is to pay.

The distinction is observed in § 2931 Revised Statutes. On the entry of any vessel, or of any merchandise, the decision of the collector of customs, etc., as to the rate and amount of duties to be paid, etc.

He may have adopted the lawful rate, but his computations may be wrong, leading to an error in the amount.

Worcester defines amount as "the sum total, the aggregate, as the amount of debt or charges."

Webster says it is "the sum total of two or more particular quantities, as the amount of 7 and 9 is 16."

No language more precise could have been adopted in the Statute to express the real intention of the law makers. The pound is the statutory unit of weight and value. Read distributively, the Statute is "and the duty upon one pound of wool, of the first class, which shall be imported, washed, shall be twice the amount of duty to which one pound of wool, of the first class, would be subjected if imported unwashed."

The appraiser testified that the total amount of duty which one pound of this wool would have paid, unwashed, would have been 12.7159 cents; this would have been, if doubled, for a pound of the washed wool, 25.4318 cents, and 3294 pounds, at this rate, would have amounted to $837.72, which the importer claimed to be correct and the Court below sustained. The amount of duty which one pound of unwashed wool would have paid, resulted from multiplying its value by the rate of 11 per cent, which gave a result of 2.7159 cents, and adding to this the rate of 10 cents per pound, which gave the amount of duty for one pound, viz.: 12.7159 cents.

It is evident that amount was here used in the Statute in its ordinary sense, and that to strike from it amount and substitute rate would give a very different meaning and result.